Remarks

The Office Action dated January 21, 2005 has been received and its contents carefully noted. Applicants have amended some of the existing claims in an effort to place the application in condition for allowance. Reconsideration is respectfully requested in view of the foregoing amendments and the following remarks offered on the cited prior art, and it is trusted that they will be persuasive in bringing about a favorable reconsideration and allowance of the claims.

Claim Rejections - 35 U.S.C. §§ 102 and 103

Turning now to the rejection under 35 U.S.C. §§ 102 and 103, claims 1-6, 8-10 and 12-19 have been rejected as being completely shown by Waite et al. (U.S. Patent No. 5,103,476). To reject claims 7 and 11, the Examiner modifies the Waite et al. patent on the grounds of alleged obviousness. Applicants respectfully disagree with these rejections for the following cogent reasons.

Applicants' Invention

Applicants' invention as disclosed and claimed provides a method and system for downloading copy protected dedicated executable application programs to a user station 10 such as a mobile station from an application source 30 wherein the executable program is limited or dedicated for use and operation to the targeted user station equipment identified when the application program is ordered. The targeted user station equipment or hardware with which the dedicated application is to be downloaded to has a unique equipment identification code 12 which is included with the order (Fig. 1, page 12, lines 25-29). In other words, the executable program is prepared and configured specifically to and for the targeted user station and no other user station.

Further, Applicants' invention as disclosed and claimed provides that the unique equipment identification code 12 of the user station 10 may be in different formats including IMEI, ESN, SIM and the equipment identification code identifying the particular user station is embedded in the application program during the ordering process (page 13, lines 1-5).

Also, Applicants' invention as disclosed and claimed also contemplates that the application may be ordered by and from any device so long as the equipment identification code identifying the particular targeted user station to which the dedicated application is to be downloaded to is provided in the order (page 17, lines 4-12).

In addition, Applicants' invention as disclosed and claimed dedicates the application program during the download process, i.e., the application is specifically <u>configured to only be useable by the specific targeted user station</u> which is identified to the application source via the equipment identification code 12 (page 7, lines 1-4). As clearly described and disclosed in the specification, the copy protected dedicated application <u>will only function or operate on the specific targeted user station</u> whose equipment identification code matches the equipment identification code of the user station specified in the order and embedded in the application program. The downloaded application program now residing in the user station cannot execute unless the equipment identification code given to it (i.e., the executable downloaded application program) at the time the order was placed matches the equipment identification code of the user station when the application program is executed at the user station (page 13, lines 25-28). Accordingly, the entire executable application program is downloaded, however it will only run on the specific targeted user station if and only if the equipment identification code embedded in the application program matches the equipment identification code of the user station attempting to run the program.

In other words, <u>the copy protected dedicated application can only be executed in the user station identified by its (the user station) equipment identification code in the original order. The copy protected dedicated application cannot be executed on a different user station from the user station identified in the order because the user station equipment identification code is different from the equipment identification code of the user station specified in the order even if the different user stations are operated by the same user.</u>

Thus, even if a copy of the executable application program was somehow made and loaded onto another user station, the copied program would not execute and run because the user station identification code would not match the targeted user station equipment identification code embedded in the copied application program because the application program is dedicated to the targeted user station by virtue of the targeted user station equipment identification code.

Applicant's invention as disclosed and claimed is presented in an exemplary embodiment as described in the specification page 11, line 15 through page 12, line 22. As described, a mobile station 10 signals the server 30 via the network 20 to connect to the server 30 and the server returns a signal to the mobile station 10 that a connection is open. The mobile station 10 sends an order for a new application and provides its (the mobile station 10) identification information in the form of an equipment identification code 12 unique to the mobile station as represented by the reference numeral 3. The identification code 12 is that of the equipment of the specific mobile station 10 placing the order. The server 30 then begins a dedication process 4 of the application to create a dedicated application 40 which includes the equipment identification code 12 of the mobile station 10. The dedicated application 40 is automatically downloaded to the mobile station 10 from the server 30 in an executable format as indicated by the reference numeral 5.

The dedicated application 40 will only function with the specific mobile station 10 which provides a matching equipment identification code 12 identifying the particular mobile station 10. The dedicated application 40 is not useful even if it is somehow illegally or otherwise copied to a different mobile station because the different mobile station to which the application is copied does not and cannot have the equipment identification code 12 of the mobile station 10 placing the order and which equipment code is embedded in the application. In other words, the mobile station 10 is able to order and download or receive a newly created dedicated application 40 directly from the server 30 by providing unique identification information in the form of an equipment identification code specific to the hardware of the mobile station and which information is incorporated into the newly created dedicated application 40 wherein the application program is copy protected by virtue of being configured to have the equipment identification code of the mobile station to run only on the mobile station and no other mobile station.

Accordingly, in Applicants' invention as disclosed and claimed, a dedicated application can be accessed and downloaded but it cannot be run or executed in the terminal or mobile station if the device identification is not the same as the identification used when the dedicated application was created for the targeted terminal or mobile station (page 11, line 29 to page 12, line 3).

To further emphasize the features of the present invention, sub-paragraph (c) of independent claim 1 has been amended to add "the downloaded dedicated executable application is copy protected by virtue of being configured by the application source to have the equipment identification code of the particular ordering user station to run only on the particular ordering user station and no other user station." Support is found in the drawings and specification at least at page 12, lines 10-12, page 13, lines 25-28, claim 1 and elsewhere in the specification. No new matter is added and no new issues are presented for consideration by way of the amendment. Applicants draw the Examiner's attention to sub-paragraph (b) of claim 1.

Sub-paragraph (d) of independent claim 9 has been amended to add "the downloaded dedicated executable application is copy protected by virtue of the template version being configured by the distributor to have the equipment identification code of the identified user station to run only on the identified user station and no other user station." Support is found in the drawings and specification at least at page 14, lines 23-29, claim 9 and elsewhere in the specification. No new matter is added and no new issues are presented for consideration by way of the amendment. Applicants draw the Examiner's attention to sub-paragraph (c) of claim 9.

Sub-paragraph (d) of independent claim 13 has been amended to add "the downloaded dedicated executable application is copy protected by virtue of the manufacturer's application being configured to have the equipment identification code of the particular user station equipment to run only on the particular user station and no other user station." Support is found in the drawings and specification at least at page 11, lines 16-25, page 12, lines 18-22, page 14, lines 23-29, page 15, lines 8-12; lines 26-27; page 16, lines 11-17 and elsewhere in the specification. No new matter is added and no new issues are presented for consideration by way of the amendment. Applicants draw the Examiner's attention to sub-paragraph (c) (a) of claim 13.

On the other hand, the Waite et al. patent describes a system for allowing a licensor to monitor the licensee of a software program (Column 1, lines 27-31) and to maintain accountability of its programs (Column 2, lines 27-29). Copies of the Waite et al. activated programs are not restricted to running on a targeted computer and can be executed and run on or used with any computer. Waite et al. expressly states at Column 2, lines 10-13:

"----also included to ensure that all copies of the activated program will include unique licensee identification data, thereby allowing unauthorized copies to be traced to the original licensee."

In the analysis of the Waite et al. patent on page 2 of the Office Action, the Examiner alleges that the Waite et al. patent has means for downloading a dedicated executable application from the application source directly to the particular user station identified. However, upon careful consideration of the Waite et al. patent this does not appear to be the case. In Waite et al., a program which does not contain a critical or essential segment, is provided in a personal computer (Column 2, lines 36-38). Waite et al. goes on to say at Column 2, lines 43-46,

"However, due to the exclusion of the critical segment, the program would NOT OPERATE without implementing the registration process."

Thus, Waite et al. appears to teach providing a program that lacks a critical or essential part that prevents the program from executing. Waite et al. then goes on to say at Column 2, line 66 - Column 3, line1,

"The registration shell program is executed when the user first attempts to execute the product application program provided in the main program file 16 of the PC operating system 14."

It would seem that preventing the program from operating by excluding a critical or essential segment does not allow a licensor or user to test a particular program before it is purchased or licensed as Waite et al. asserts at Column 2, lines 30-35.

In contrast, Applicants' invention as disclosed and claimed downloads a complete executable application program that is configured to run on the targeted user station and no other user station. All information necessary to execute and run the application program is present in the Applicants' downloaded executable copy protected application program.

In the analysis of the Waite et al. patent on page 2 of the Office Action, the Examiner alleges the source configures the application to include the unique identification information specific to the particular user station equipment information code. However, upon careful consideration of the Waite et al. patent this does not appear to be the case. In Waite et al. the critical or essential segment may be the entire program (Column 2, lines 39-41). Thus, Waite et

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al. does not configure the application to include a specific user station equipment identification code to run its program. In fact, Waite et al. teaches an entirely different concept from Applicants' invention as disclosed and claimed. It appears that Waite et al. requires a loader segment to load to the computer and execute before executing the activation of the product application (Column 4, lines 14-21). Now if the essential or critical segment is the whole program as Waite et al. asserts at Column 2, lines 39-41, the whole program is not configured to a specific targeted computer.

In contrast, Applicants' invention downloads a complete executable application program that is configured to run on the targeted user station and no other user station and no other user station by virtue of being configured to have the equipment identification code of the targeted user station to run only on the targeted user station and no other user station..

In the further analysis of the Waite et al. patent on page 2 of the Office Action, the Examiner asserts the dedicated executable application is downloaded from the application source directly to the particular user station identified. Upon careful consideration of Waite et al. this does not appear to be the case. Waite et al. utilizes a separate overlay apart from the main program and which overlay as understood requires that the critical portions or segments of the main program file and license control data be present on the computer and if the overlay is present on the computer, the loader program which is separate from the overlay then proceeds to activate the main program (column 4, lines 49-62). Thus, without the overlay, the main program does not and cannot run. Therefore, Waite et al. does not deliver an executable program but only an enabling portion which is not a standalone application.

In contrast, Applicants' invention downloads a complete executable application program that is configured to run on the targeted user station. All information necessary to execute and run the application program is present in the downloaded executable copy protected application program.

Further, as discussed above, the Waite et al. patent is limited to teaching a method for monitoring license abuse after activation of the main program because the critical segment may not be separated from the "unique" licensee identification data and license control data without detection, nor may the licensee identification and license control data be changed without detection (column 4, lines 62-68). In Waite et al., the activated program may be copied and run on another computer having a different serial number, different equipment code, different user,

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different site, etc. because Waite et al. only teaches and discloses a method for monitoring unauthorized copies to trace the copy back to the original licensee and only in the event that the unauthorized copy is even detected or discovered. Thus, in Waite et al., the copied program could run on multiple different computers at the same time. Waite et al. does not teach, suggest or disclose the disablement of an activated program from running on any computer and does not limit the activated program to only run on a targeted computer.

In contrast, Applicants' invention downloads a complete executable application program that is configured to run on the targeted user station and no other user station by virtue of being configured to have the equipment identification code of the targeted user station to run only on the targeted user station and no other user station.

In the analysis of the Waite et al. patent on page 2 of the Office action, the Examiner asserts the serial number of the computer is somehow equivalent to Applicants' identification code of the user station equipment which identifies the particular user station equipment which the copy protected dedicated executable application is to be downloaded to and which equipment identification code is provided to the application source which configures the application to have the equipment identification code of the particular user station equipment so the application runs on the particular user station and no other user station. Upon careful consideration of the Waite et al. patent, this does not appear to be the case. As discussed above, the Waite et al. program can be copied to run on any number of different computers at the same time. At best, Waite et al. teaches the serial number of the computer can be used in the license identification data for monitoring purposes to allow unauthorized copies to be traced back to the original licensee.

In contrast, Applicants' invention downloads a complete executable application program that is configured with the equipment identification code of the targeted user station so that the application runs on the targeted user station and no other user station by virtue of being configured to have the equipment identification code of the targeted user station to run only on the targeted user station and no other station.

Accordingly, it is submitted that the present invention is unique and constitutes an important advance in the art over Waite et al.

The Examiner recognizes some of the inherent deficiencies of the Waite et al. patent and attempts to correct them by combining bits and pieces of Molne into the Waite et al. patent to reject claims 7 and 11. However, Molne does not make up for the above noted basic deficiencies

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in the Waite et al. patent so the combination proposed by the Examiner still falls far short of the present invention.

In addition, it is only when the Examiner looks to Applicants' own disclosure that the Examiner can allege anticipation and obviousness by choosing bits and pieces of the prior art references and then combining these bits and pieces together based on alleged obviousness. In some instances, the Examiner does not even use a modifying reference and merely makes modifications to the Waite et al. patent without any teaching (other than Applicants' own teaching) to prompt the combinations/modifications. Such rejections are merely improper hindsight reconstruction of Applicants' own invention using Applicants' own disclosure. Thus, it is not seen how the claimed invention can be derived from Waite et al. or Molne as these references, alone or in combination, simply do not teach or suggest what is set out in the Applicants' claims and do not provide the basis for developing the invention to persons having ordinary skill in the art to which the subject matter pertains. Accordingly, The Examiner's reliance on these prior art references is not properly grounded and the rejections based thereon should be withdrawn.

The Court of Appeals for the Federal Circuit has steadfastly criticized such modification. "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). See also, e.g., In re Laskowski, 871 F.2d 115, 10 USPQ 2d 1397 (Fed. Cir. 1989); Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985); In re Grabiak, 769 F.2d 729, 731, 226 USPQ 870, 872 (Fed. Cir. 1985); In re Sernaker, 701 F.2d 989, 994, 217 USPQ 1, 5 (Fed. Cir. 1983).
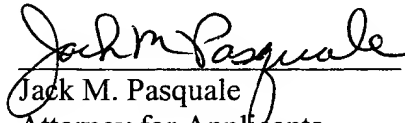
In summary, it is submitted that the present invention as claimed is readily distinguishable from the prior art for the reasons indicated. Applicants' invention is not disclosed by the prior art and there is no fair basis for alleging that Applicants' invention is anticipated or obvious in regard to such prior art. If the invention was obvious, it would have been adopted before in view of its advantages.

Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that all the claims are allowable and early favorable action is earnestly solicited. The Examiner is invited to call Applicants' attorney if any questions remain following review of this response.

Respectfully submitted,

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